

Serial No. 10/698,920
Examiner Amina S. Khan
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REMARKS

The non-final Office Action mailed on September 11, 2007 has been reviewed and the Examiner's comments have been carefully considered. Claims 14-23 were previously canceled. Claims 1-13 and 24-37 remain pending in this case.

In the current Office Action dated September 11, 2007 rejections of claims 1-13 and 24-29 under 35 U.S.C. §112, second paragraph have been withdrawn. Rejections under 35 U.S.C. §103(a) have been maintained.

In response to the rejections of claims 1-13 and 24-30 under 35 U.S.C. §103(a) as being unpatentable over the primary reference of Flynn et al. (U.S. Patent No. 5,962,390) in view of the secondary references (Dickey, DePas et al., Tatch and Krugman), Applicants submit the following arguments below.

In addition, Applicants are hereby filing a Declaration of Mr. Tremitchell Wright under 37 C.F.R. §1.131 to provide additional evidentiary fact to supplement that which is already of record, to swear behind the Flynn et al ('390) reference and to remove it from consideration. The Declaration and supporting documents show that the Applicants had conceived of and diligently reduced to practice the method recited in the independent claims prior to the effective date of Flynn et al.

I. Rejection of claims 1-13, 24-37 under 37 U.S.C. §103(a) as being unpatentable over Flynn et al. (US 5,962,390) in view of the secondary references

Claims 1-13 and 24-30 stand rejected under 37 USC §103(a) as being unpatentable over the primary reference Flynn et al. (US 5,962,390) in view of secondary references as described below.

A. Claims 1-5, 13, 24, 27, 29 and 30 are not obvious under 35 USC 103(a) over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118)

Claims 1-5 and 13 stand rejected under 35 USC §103(a) as being unpatentable over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118). The USPTO states that it would have been obvious for one of ordinary skilled in the art to modify Flynn, et al., which discloses:

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methods of cleaning fabrics, to incorporate the agitation means taught by Dickey for improved mixing of the working fluids and fabrics during dry cleaning.

Applicants maintain that a prima face case of obviousness under 35 USC §103(a) has not been established by the cited art of record. Flynn et al. does not disclose a method of cleaning in an automatic laundering apparatus using an inert working fluid (IWF), that is, a substantially non-reactive, non-aqueous, non-oleophilic, apolar working fluid. Applicants' invention is a departure in thinking of pre-existing cleaning methods which has led to a counter-intuitive approach to cleaning fabric. Previous to Applicants' invention, "bulk carriers" or "working fluids" used in the dry-cleaning methods involving a laundering apparatus used chemicals specifically chosen to chemically clean the fabric. These detergent bulk carriers were sometimes used in conjunction with a wash adjuvant which were used to further clean the clothes, or which were provided to function as surfactants, fabric softeners, perfumes, etc.

Applicants were the first to conceive of a method for cleaning a load of fabrics in a washing machine which could be achieved using an substantially inert working fluid (IWF) that is not damaging to the fibers. Inert action relies significantly on mechanical cleaning and thermal action and less on chemical cleaning. Applicants have found, surprisingly, that fabrics could be well cleaned by a method in which a working fluid, or the bulk fluid is a substantially inert working fluid (IWF) provided it is used in conjunction with an adjuvant. Initial fluids selected and analyzed for use as the working fluid were chosen by the Applicants on the basis that the inert working fluids would do little or no cleaning, and adjuvants were selected for their chemical properties. These experiments led to the surprising result that cleaning could be done with little or no chemical action resulting from the working fluid or bulk fluid. This led to the choice of other fluids that were relatively inert, and which would not be considered as a solvent or working fluid by those of ordinary skill in the industry, while also leading to fluids that had favorable properties and cost advantages while still obtaining the benefit of this cleaning method breakthrough. Thus, Applicants' method discloses the use the traditionally known cleaning chemicals as an adjuvant rather than in the bulk fluid. This was the beginning of a complete paradigm shift for the dry-cleaning industry. In addition to the fact that the traditionally known cleaning chemicals can be detrimental to fabrics or clothes, Applicants invention avoidance of the many detrimental environmental effects of the traditionally known cleaning chemicals used

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in the working fluid or bulk fluid.

Applicants' method claims recite a class of inert working fluids, among other elements of the method, which are known or readily discernable by one of ordinary skill in the art. That is, one of ordinary skill in the art would easily be able to determine, based on the described invention, whether a particular compound would constitute an inert working fluid and that the traditionally known chemicals used in cleaning, in bulk fluids and in adjuvants, would not qualify as such. Thus, while the traditional solvents, or working fluids, continue to be used in the dry-cleaning industry to effectively clean fabrics, Applicants have discovered that the working fluid need not contain these traditional solvents or working fluids as the primary cleaning ingredients.

Since the time of filing Applicants' pending patent application, which claims a priority date of April 29, 1996, other companies (some of which are suppliers to Assignee) have since disclosed species compositions of Applicants' class of compound for the inert working fluid (IWF).

The Dickey reference uses traditional deterative cleaning solvents used as the bulk or working fluid in addition to the adjuvants to clean. The dry cleaning method of Dickey does not involve a substantially non-reactive, non-aqueous, non-oleophilic apolar inert working fluid (IWF) or a reliance significantly on mechanical cleaning by the working fluid. While the teachings of Flynn et al. describe spot or stain cleaning chemicals rather than the bulk carrier fluid in an automatic laundering apparatus the teaching of the references must be taken for what it fairly suggests. The method which recited in claim 1 including the combination of a substantially non-reactive, non-aqueous, non-oleophilic, apolar working fluid in an automatic laundering apparatus, is uniquely found in only the claims of the instant application.

Furthermore, Applicants respectfully submit that the Examiner cannot rely on Dickey for support of randomized oscillation steps where random oscillation is not disclosed by the cited references. Furthermore, the Examiner provides no basis for claiming that randomized oscillations leads to optimization where such practice is not the convention, nor by the record of art is it considered among "any conventional means".

Applicants respectfully request withdrawal of the rejection of claims 1-5, 13, 24, 27, 29 and 30 under 35 USC §103(a) as being obvious over Flynn et al. in view of Dickey.

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B) Claim 6 is not obvious under 35 USC 103(a) over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of De Pas et al. (US 3,163,028)

Claim 6 which depends from claim 1 stands rejected under 35 USC 103(a) as being unpatentable over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of De Pas et al. (US Patent 3,163,028).

Applicants' maintain that a prima face case of obviousness under 35 USC 103(a) has not been established by the cited art of record, for the reasons described above, namely, that one of ordinary skill in the art would not be motivated to use the inert working fluids (IWF) as the bulk fluid in a automatic laundering apparatus, and would not be motivated to combine Flynn and Dickey to arrive at Applicants' invention.

Accordingly, Applicants respectfully requests withdrawal of this claim 6 rejection as being unpatentable over Flynn et al. in view of Dickey, and further in view of De Pas et al.

C) Claims 7 and 10 are not obvious under 35 USC 103(a) over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of Tatch et al. (US 5,431,827)

Claims 7 and 10 are rejected under 35 USC 103(a) as being unpatentable over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of Tatch et al. (US 5,431,827).

Applicants respectfully submit that a prima face case of obviousness under 35 USC 103(a) has not been established by the cited art of record, for the reasons described above with respect to Flynn et al. and Dickey.

Applicants respectfully requests withdrawal of the rejection of claims 7 and 10 as being unpatentable over Flynn et al. in view of Dickey, and further in view of Tatch et al.

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D) Claims 8, 9, 11, 25, 26, and 28 are not obvious under 35 USC 103(a) over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and Tatch et al. (US 5,431,827) and further in view of Krugmann (US 4,252,546)

Claims 8, 9, 11, 12, 25, 26 and 28 are rejected under 35 USC 103(a) as being unpatentable over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and Tatch et al. (US 5,431,827) and further in view of Krugmann (US 4,252,546). The USPTO states that it would have been obvious to one of ordinary skill in the art to modify Flynn et al. by incorporating the water condensation means taught by Krugmann et al. involving solidification of water.

Applicants' maintain that a prima face case of obviousness under 35 USC 103(a) has not been established by the cited art of record for the reasons described above with respect to Flynn et al. in view of Dickey and further in view of Tatch.

With respect to claim 28 which is dependent from claim 10, the cited references in combination do not disclose a method for cleaning in which the working fluid is passed through the membrane filter, producing a working fluid (permeate) which is then filtered through the permeate filter.

With respect to claims 29 and 30, the USPTO states that it would have been further obvious to optimize the cleaning and drying steps by randomizing and repeating the oscillation steps only require routine skill in the art.

Applicants have found that randomized oscillation during the wash cycle (as recited in claim 29) and randomized oscillations during the dry cycles (as recited in claim 30) result in improved cleaning in less time utilizing the inert working fluids (IWF) and also improved fabric care. In a wash method which involves an inert working fluid as the bulk carrier, improved cleaning which yields improved fabric care in yet an efficient manner, is an advancement in the art. Applicants respectfully submit that one of ordinary skill in the art would not be motivated nor inclined to develop randomized cleaning and drying for improved fabric care utilizing the traditional chemically deterative working fluids that have been used for years.

Accordingly, Applicants respectfully request withdrawal of rejection of claims 8, 9, 11, 12, 25, 26 and 28 as being unpatentable over Flynn et al., in view of Dickey, further in view of Tatch et al., and further in view of Krugmann et al.

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E) Claims 31-37 are not obvious under 35 USC 103(a) over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of Hallman et al. (US 2003/0196277)

Claims 31-37 which ultimately depend from claim 1 stands rejected under 35 USC 103(a) as being unpatentable over Flynn et al. (US Patent 5,962,390) in view of Dickey (US 3,410,118) and further in view of Hallman et al. (US 2003/0196277).

The USPTO concedes that Flynn et al are silent as to the step of oscillating randomly in opposite directions states that it would have been obvious to one of ordinary skill in the art to modify Flynn et al. by incorporating the agitation means taught by Dickey to allow for improved mixing of the working fluids, and further obvious, to optimize the cleaning and drying steps by randomizing and repeating the oscillation steps. The Examiner states that it would have been obvious to modify the methods of Flynn by incorporating the sensing methods for controlling the fluid level, concentration and temperature as taught by Hallman.

Applicants' maintain that a prima face case of obviousness under 35 USC 103(a) has not been established by the cited art of record, for the reasons described above, namely, that one of ordinary skill in the art would not be motivated to use the inert working fluids (IWF) as the bulk fluid in a automatic laundering apparatus, and would not be motivated to combine Flynn et al. and Dickey to arrive at Applicants' invention. Accordingly, Applicants respectfully requests withdrawal of this claim 6 rejection as being unpatentable over Flynn et al. in view of Dickey, and further in view of Hallman et al.

II. Declaration under 37 C.F.R. §1.131

Applicants are hereby submitting a Declaration under 37 C.F.R. §1.131 to swear behind the reference of Flynn et al. U.S. Patent No. 5,962,390 (Ser. No. 08/649,361) and to remove it from consideration. The previously filed Affidavit and Exhibits A and B and relating to "Project Hope" are hereby supplemented by the contemporaneously filed Declaration and Exhibits C, D, E, F, G, H, and I also relating to "Project Hope" and which show that the Applicants had actual reduction to practice or at least conceived of and diligently reduced to practice the method

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recited in the independent claims prior to the filing date of Flynn et al. on May 17, 1996. The supporting documents show data which was stored and reported in the "Whirlpool Information Network" as well as supporting documentation of the dates of such acts. The Exhibits show that Applicants identified a matrix of inert working fluids (See Exhibits A, B and G entitled "Updated Non-Aqueous Matrix"), their properties, and testing which showed them to be effective as a bulk fluid, and used in an automatic laundering apparatus. Exhibit H discloses the testing protocol and Exhibit I is evidence of laboratory study initiated prior to May 17, 1996. The documents evidence a conception and reduction to practice, thus removing the reference from consideration.

Applicants' patent application 10/699,920 is a continuation-in-part of Ser. No. 10/420,115 now US 6,766,670 issued July 27, 2004, claiming benefit from provisional application no. 60/045,072 filed on April 29, 1997 (the effective filing date).

Flynn et al. U.S. Patent No. 5,962,390 (Ser. No. 08/649,361) filed on May 17, 1996 and issued on October 5, 1999 is a continuation-in-part of application No. 08/573,416 filed on December 15, 1995, and which is a continuation of application No. 08/375, 812, filed January 20, 1995 now abandoned.

Applicants respectfully submit that the Examiner must consider all of the evidence presented in its entirety, including all affidavits and declarations and all accompanying exhibits. MPEP 715.07. furthermore an accompanying exhibit need not support all claimed limitation, provided that any missing limitation is supported by the declaration itself. MPEP 715.07 citing, *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989).

Accordingly, Applicants respectfully request withdrawal of rejection of claims 1-13 and 24-37 under 35 U.S.C. §103(a) as being unpatentable over the primary reference of Flynn et al (U.S. Patent No. 5,962,390) in view of the secondary references (Dickey, DePas et al., Tatch, Krugman and Hallman).

Conclusion

In summary, Applicants believes that this Amendment is fully responsive to the Final Office Action mailed on September 11, 2007 and that Applicants' claims include features which patentably define over the cited references. It is respectfully requested that for the foregoing reasons claims 1-13 and 24-37 of this application be found in condition for allowance.

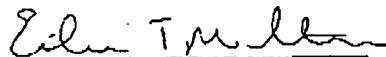
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If the Examiner believes there are any further matters, which need to be discussed in order to expedite the prosecution of the present application, the Examiner is invited to contact the undersigned.

In the event there are any fees necessitated by the foregoing communication, please charge such fees to our Deposit Account No.02-2051 referencing our Docket No. US19984054-8 (31480.3).

Respectfully submitted,

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Dated: March 11, 2008

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